

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CEDRIC DUPREE,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 08-618-GPM
)	
MAJOR MAUE, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

This matter is before the Court on the Report and Recommendation of United States Magistrate Judge Philip M. Frazier (Doc. 82), recommending that Defendant Fritz's motion to dismiss, construed by the Court as a motion for summary judgment for failure to exhaust administrative remedies (part of Doc. 36), be denied. The Report and Recommendation was entered on November 5, 2009, and, to date, no objections have been filed.

On May 29, 2009, various defendants filed a motion to dismiss based upon several grounds (Doc. 36). Thereafter, the part of the motion filed by Defendant Fritz for failure to exhaust administrative remedies was converted to a motion for summary judgment (*see* Doc. 39). In accordance with the dictates of *Pavey v. Conley*, 544 F.3d 739 (7th Cir. 2008), Magistrate Judge Frazier held a hearing on Defendant Fritz's exhaustion affirmative defense (*see* Doc. 76). The undersigned district judge disposed of the other arguments asserted in the motion to dismiss by separate hearing held on August 31, 2009 (Doc. 70). Following the *Pavey* hearing, Magistrate Judge Frazier issued the Report and Recommendation currently before this Court.

Where timely objections are filed, this Court must undertake a *de novo* review of the Report and Recommendation. 28 U.S.C. § 636(b)(1)(B), (C); FED. R. CIV. P. 72(b); SDIL-LR 73.1(b); *Harper v. City of Chicago Heights*, 824 F. Supp. 786, 788 (N.D. Ill. 1993); *see also Govas v. Chalmers*, 965 F.2d 298, 301 (7th Cir. 1992). The Court “may accept, reject or modify the magistrate judge’s recommended decision.” *Harper*, 824 F. Supp. at 788. In making this determination, the Court must look at all of the evidence contained in the record and “give ‘fresh consideration to those issues to which specific objections have been made.’” *Id.*, *quoting* 12 Charles Alan Wright et al., *Federal Practice and Procedure* § 3076.8, at p. 55 (1st ed. 1973) (1992 Pocket Part).

However, where neither timely nor specific objections to the Report and Recommendation are made, pursuant to 28 U.S.C. § 636(b), this Court need not conduct a *de novo* review of the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985). Accordingly, the Court **ADOPTS** Magistrate Judge Frazier’s Report and Recommendation (Doc. 82),¹ and Defendant Fritz’s motion for summary judgment based on exhaustion of administrative remedies (part of Doc. 36) is **DENIED**. Having disposed of Defendants’ motion filed May 29, 2009 (Doc. 36) in its entirety, the Court **DIRECTS** the Clerk of Court to terminate this motion on the Court’s docket.

IT IS SO ORDERED.

DATED: 12/07/09

s/ *G. Patrick Murphy*
G. PATRICK MURPHY
United States District Judge

¹While a *de novo* review is not required, the Court fully agrees with the findings, analysis, and conclusions of Magistrate Judge Frazier.